

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on March 27, 2003 at 8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: Rep. John Parker (D)
Rep. Steven Gallus (D)

Members Absent: None.

Staff Present: Lisa Swanson, Committee Secretary
John MacMaster, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 447, 3/18/2003
Executive Action: SB 362

EXECUTIVE ACTION ON SB 362

Motion: REP. RASER moved that SB 362 BE CONCURRED IN.

Discussion:

The Committee discussed changes made in the Senate such as taking out Lines 24-26 of Page 1. **CHAIRMAN SHOCKLEY** commented on some amendments he would propose. He stated that SENATOR GRIMES believed would get through the Senate. The amendment, in essence, stated that if people, 18 years or older, are at a place where they know minors are drinking, they may be guilty under this statute. **John MacMaster** commented the person has to knowingly be at that place. **REP. NOENNIG** stated that this is a 180 degrees from where REP. LASZLOVICH wanted this bill. **REPS. HARRIS** and **RICE** believed this bill would have unintended consequences.

EXHIBIT (juh65a01)

{Tape: 1; Side: A; Approx. Time Counter: 1 - 62}

Motion/Vote: REP. SHOCKLEY moved that SB 362 BE CONCURRED IN. Motion carried 11-7, by roll call vote, with REPS. FACEY, RASER, GALLUS, GUTSCHE, HARRIS, MALCOLM, and RICE voting no.

{Tape: 1; Side: A; Approx. Time Counter: 62 - 210}

Motion: REP. GUTSCHE moved that SB 362 BE CONCURRED IN AS AMENDED.

Motion/Vote: REP. HARRIS moved that SB 362 BE AMENDED. (Harris Amendment, replacing first "knowingly" with "purposely.") Motion carried 18-0, by voice vote. (REPS. PARKER and GALLUS by Vice Chair voice proxy.)

{Tape: 1; Side: A; Approx. Time Counter: 210 - 301}

Motion: REP. GUTSCHE moved that SB 362 BE CONCURRED IN AS AMENDED.

Discussion:

REP. GUTSCHE explained her amendment would allow for more than State-approved programming. It would allow all hospitals who have this programming in place already to participate.

{Tape: 1; Side: A; Approx. Time Counter: 301 - 319}

Motion/Vote: **REP. GUTSCHE** moved that SB 362 BE AMENDED. (Gutsche Amendment Page 4, Lines 20-21 regarding treatment.) Motion carried 18-0, by voice vote. (REPS. PARKER and GALLUS by Vice Chair voice proxy.)

Motion: **REP. GUTSCHE** moved that SB 362 BE CONCURRED IN AS AMENDED.

Motion/Vote: **REP. NOENNIG** moved that SB 362 BE AMENDED. (Noennig Amendment to change "confiscate" to "suspend.") Motion carried 10-8, by roll call vote with REPS. EVERETT, GALLUS, GUTSCHE, HARRIS, LASZLOFFY, MALCOLM, RASER, and RICE voting no. (REPS. GALLUS and PARKER by Vice Chair voice proxy.)

{Tape: 1; Side: B; Approx. Time Counter: 1 - 165}

Motion/Vote: **REP. LASZLOFFY** moved that SB 362 BE CONCURRED IN. Motion carried 11-7, by roll call vote, with REPS. GALLUS, EVERETT, GUTSCHE, HARRIS, MALCOLM, RASER, and RICE voting no. **REP. NEWMAN** will carry. (REPS. GALLUS and PARKER by Vice Chair voice proxy.)

{Tape: 1; Side: B; Approx. Time Counter: 165 - 341}

HEARING ON SB 447

Sponsor: **SENATOR DWAYNE GRIMES, SD, 20, Clancy**

Opening Statement by Sponsor:

SENATOR GRIMES opened on SB 447. He stated that this bill revises laws relating to employment references, blacklisting, and defamation. It clarifies when an employee may give consent to release information to the public and eliminates limits on liability for employment references. The bill sets forth when a publication is privileged. He stated that Section 2 of the bill requires an employer who discharges an employee from service

shall, upon written demand by the discharged employee made within 30 days of the discharge, furnish the discharged employee a written statement of reasons for the discharge within 30 days of receipt of the written demand.

EXHIBIT (juh65a02)

{Tape: 1; Side: B; Approx. Time Counter: 341 - 511}

Proponents' Testimony:

John Sullivan, Helena, supported SB 447. He stated that defamation laws are not the proper venue to deal with public employment. He explained that the problem with the current law is that an employer's liability for an employment reference is judged by a criminal negligence standard. He stated that under current law, you have a civil cause of action defamation and a criminal statute to determine liability which is a strange situation.

Bob Pyfer, Montana Credit Union Network, supported SB 447.

{Tape: 2; Side: A; Approx. Time Counter: 1 - 286}

Jim Kembel, Montana Association of Chiefs of Police, Helena, supported SB 447.

{Tape: 2; Side: A; Approx. Time Counter: 286 - 297}

Opponents' Testimony:

Elizabeth Best, Attorney, Great Falls, opposed SB 447. She emphasized that this bill will increase litigation and that there has never been a case in Montana before the Supreme Court on reference check issues. Under current law, if an employee thinks something false was said about them, they have to prove it. She emphasized that in defamation it must be false and cause harm. She urged the Committee to not pass this bill stating, "If it ain't broke, don't fix it."

{Tape: 2; Side: A; Approx. Time Counter: 297 - 394}

Al Smith, Montana Trial Lawyers Association, Helena (MTLA), opposed SB 447. He stated that the MTLA opposed this bill in the 1999 and 2001 sessions. He stated that the MTLA put out a publication after the session entitled, The Good, The Bad, and

The Ugly, and that this bill was deemed the ugliest. He asked the Committee to not kill the bill but rather to delete everything in the bill except for Page 3, Section 5, Line 12 that repeals the bad law passed in 1999 stating, "This would leave the truth in common law to prevail." He stated that twenty-nine states have legislation similar to Section 5. He stressed that this bill is not balanced but the old, pre-1999 bill was balanced and should be reenacted. He stated that this bill will not accomplish it's intent, to get employers to give out employee information. There is no language in this bill regarding an employer's mandatory duty to give out information. He felt that the bottom line is that employers will still withhold information. He closed emphasizing that not a single case has gone before the Supreme Court in more than 20 years over this issue.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 4}

{Tape: 2; Side: A; Approx. Time Counter: 394 - 511}

Daryl Holzer, AFL-CIO, Helena, opposed SB 447. He stated he cannot add to what Mr. Smith testified to other than stating that proponents made no compelling argument why this bill should be passed. He stated that the number one priority in Montana should be in favor of the common workers.

{Tape: 2; Side: B; Approx. Time Counter: 4 - 28}

Don Judge, AFL-CIO, Teamsters Local, Helena, opposed SB 447. He stated that the section of the bill dealing with the employee waiver regarding work history raises questions whether employers could say anything they want to. He stated that employees have no idea what they would be opening themselves up to by signing this waiver.

{Tape: 2; Side: B; Approx. Time Counter: 28 - 53}

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

SENATOR GRIMES closed on SB 447. He emphasized that there is a problem in the employer community which this bill would fix. He urged a do pass.

{Tape: 2; Side: B; Approx. Time Counter: 53 - 120}

ADJOURNMENT

Adjournment: 12 P.M.

REP. JIM SHOCKLEY, Chairman

LISA SWANSON, Secretary

JS/LS

EXHIBIT (juh65aad)